

Requested by Representative SMITH G

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3427**

1 In line 2 of the printed bill, after “funding” insert “; creating new pro-  
2 visions; amending ORS 315.266, 316.037 and 317.061 and section 6, chapter 880,  
3 Oregon Laws 2007; and prescribing an effective date”.

4 Delete lines 4 through 8 and insert:  
5

6 **“MODIFICATIONS TO PERSONAL INCOME AND**  
7 **CORPORATE EXCISE TAXES**  
8

9 **“SECTION 1.** ORS 316.037 is amended to read:

10 “316.037. (1)(a) A tax is imposed for each taxable year on the entire tax-  
11 able income of every resident of this state. The amount of the tax shall be  
12 determined in accordance with the following table:

13 [ \_\_\_\_\_ ]

14 *If taxable income is:*                      *The tax is:*

15

16 *Not over \$2,000*                              *5% of*

17    *taxable*

18    *income*

19

20 *Over \$2,000 but not*

21 *over \$5,000*                                      *\$100 plus 7%*

1 *of the excess*  
2 *over \$2,000*

3  
4 *Over \$5,000 but not*

5 *over \$125,000* *\$310 plus 9%*  
6 *of the excess*  
7 *over \$5,000*

8  
9 *Over \$125,000* *\$11,110 plus 9.9%*

10 *of the excess*  
11 *over \$125,000*

12 “[ \_\_\_\_\_ ]  
13 “ \_\_\_\_\_

14 **If taxable income is:**      **The tax is:**

15  
16 **Not over \$2,000**      \_\_\_\_\_% **of**  
17 **taxable**  
18 **income**

19  
20 **Over \$2,000 but not**  
21 **over \$5,000**      \$\_\_\_\_\_ **plus** \_\_\_\_\_%  
22 **of the excess**  
23 **over \$2,000**

24  
25 **Over \$5,000 but not**  
26 **over \$125,000**      \$\_\_\_\_\_ **plus** \_\_\_\_\_%  
27 **of the excess**  
28 **over \$5,000**

29  
30 **Over \$125,000**      \$\_\_\_\_\_ **plus** \_\_\_\_\_%

1                                   of the excess  
2                                   over \$125,000

3 “ \_\_\_\_\_  
4       “(b) For tax years beginning in each calendar year, the Department of  
5 Revenue shall adopt a table that shall apply in lieu of the table contained  
6 in paragraph (a) of this subsection, as follows:

7       “(A) Except as provided in subparagraph (D) of this paragraph, the mini-  
8 mum and maximum dollar amounts for each bracket for which a tax is im-  
9 posed shall be increased by the cost-of-living adjustment for the calendar  
10 year.

11       “(B) The rate applicable to any rate bracket as adjusted under subpara-  
12 graph (A) of this paragraph shall not be changed.

13       “(C) The amounts setting forth the tax, to the extent necessary to reflect  
14 the adjustments in the rate brackets, shall be adjusted.

15       “(D) The rate brackets applicable to taxable income in excess of \$125,000  
16 may not be adjusted.

17       “(c) For purposes of paragraph (b) of this subsection, the cost-of-living  
18 adjustment for any calendar year is the percentage (if any) by which the  
19 monthly averaged U.S. City Average Consumer Price Index for the 12 con-  
20 secutive months ending August 31 of the prior calendar year exceeds the  
21 monthly averaged index for the second quarter of the calendar year [1992]  
22 **2018**.

23       “(d) As used in this subsection, ‘U.S. City Average Consumer Price  
24 Index’ means the U.S. City Average Consumer Price Index for All Urban  
25 Consumers (All Items) as published by the Bureau of Labor Statistics of the  
26 United States Department of Labor.

27       “(e) If any increase determined under paragraph (b) of this subsection is  
28 not a multiple of \$50, the increase shall be rounded to the next lower mul-  
29 tiple of \$50.

30       “(2) A tax is imposed for each taxable year upon the entire taxable income

1 of every part-year resident of this state. The amount of the tax shall be  
2 computed under subsection (1) of this section as if the part-year resident  
3 were a full-year resident and shall be multiplied by the ratio provided under  
4 ORS 316.117 to determine the tax on income derived from sources within this  
5 state.

6 “(3) A tax is imposed for each taxable year on the taxable income of every  
7 full-year nonresident that is derived from sources within this state. The  
8 amount of the tax shall be determined in accordance with the table set forth  
9 in subsection (1) of this section.

10 **“SECTION 2.** ORS 317.061 is amended to read:

11 “317.061. The rate of the tax imposed by and computed under this chapter  
12 is:

13 “(1) [*Six and six-tenths*] \_\_\_\_\_ percent of the first \$1 million of taxable  
14 income, or fraction thereof; and

15 “(2) [*Seven and six-tenths*] \_\_\_\_\_ percent of any amount of taxable income  
16 in excess of \$1 million.

17 **“SECTION 3.** ORS 315.266 is amended to read:

18 “315.266. (1)(a) In addition to any other credit available for purposes of  
19 ORS chapter 316, an eligible resident individual shall be allowed a credit  
20 against the tax otherwise due under ORS chapter 316 for the tax year in an  
21 amount equal to [*eight*] \_\_\_\_\_ percent of the earned income credit allowable  
22 to the individual for the same tax year under section 32 of the Internal  
23 Revenue Code.

24 “(b) Notwithstanding paragraph (a) of this subsection, for a taxpayer with  
25 a dependent under the age of three at the close of the tax year, the credit  
26 allowed under this section shall be in an amount equal to [*11*] \_\_\_\_\_ percent  
27 of the earned income credit allowable to the individual for the same tax year  
28 under section 32 of the Internal Revenue Code.

29 “(2) An eligible nonresident individual shall be allowed the credit com-  
30 puted in the same manner and subject to the same limitations as the credit

1 allowed a resident by subsection (1) of this section. However, the credit shall  
2 be prorated using the proportion provided in ORS 316.117.

3 “(3) If a change in the taxable year of a taxpayer occurs as described in  
4 ORS 314.085, or if the Department of Revenue terminates the taxpayer’s  
5 taxable year under ORS 314.440, the credit allowed by this section shall be  
6 prorated or computed in a manner consistent with ORS 314.085.

7 “(4) If a change in the status of a taxpayer from resident to nonresident  
8 or from nonresident to resident occurs, the credit allowed by this section  
9 shall be determined in a manner consistent with ORS 316.117.

10 “(5) If the amount allowable as a credit under this section, when added  
11 to the sum of the amounts allowable as payment of tax under ORS 316.187  
12 or 316.583, other tax prepayment amounts and other refundable credit  
13 amounts, exceeds the taxes imposed by ORS chapters 314 and 316 for the tax  
14 year after application of any nonrefundable credits allowable for purposes  
15 of ORS chapter 316 for the tax year, the amount of the excess shall be re-  
16 funded to the taxpayer as provided in ORS 316.502.

17 “(6) The Department of Revenue may adopt rules for purposes of this  
18 section, including but not limited to rules relating to proof of eligibility and  
19 the furnishing of information regarding the federal earned income credit  
20 claimed by the taxpayer for the tax year.

21 “(7) Refunds attributable to the earned income credit allowed under this  
22 section do not bear interest.

23 **“SECTION 4. The amendments to ORS 316.037 and 317.061 by**  
24 **sections 1 and 2 of this 2019 Act apply to tax years beginning on or**  
25 **after January 1, 2020.**

26 **“SECTION 5.** Section 6, chapter 880, Oregon Laws 2007, as amended by  
27 section 1, chapter 750, Oregon Laws 2013, is amended to read:

28 **“Sec. 6.** ORS 315.266 applies to tax years beginning before January 1,  
29 [2020] **2026.**

30 **“SECTION 6. The amendments to ORS 315.266 by section 3 of this**

1 2019 Act apply to tax years beginning on or after January 1, 2020, and  
2 before January 1, 2026.

3

4

## “BUSINESS ACTIVITY TAX

5

6 **“SECTION 7. As used in sections 7 to 18 of this 2019 Act:**

7 **“(1) ‘Business activity tax base’ means a business enterprise’s gross**  
8 **receipts less the adjustments and exclusions provided in section 8 of**  
9 **this 2019 Act.**

10 **“(2)(a) ‘Business enterprise’ means any profit or nonprofit entity**  
11 **or organization, whether a corporation, partnership, limited liability**  
12 **company, proprietorship, pass-through entity, association, trust,**  
13 **foundation, business trust, real estate trust or other form of organ-**  
14 **ization, engaged in or carrying on any business activity in this state.**

15 **“(b) ‘Business enterprise’ does not include:**

16 **“(A) An entity that is expressly made exempt from income taxation**  
17 **under section 501(c)(3) of the Internal Revenue Code, to the extent that**  
18 **the entity does not engage in any business activity constituting an**  
19 **unrelated trade or business, as defined in section 513 of the Internal**  
20 **Revenue Code.**

21 **“(B) Financial institutions, as defined in ORS 314.610.**

22 **“(C) Insurers, as defined in ORS 317.010.**

23 **“(3) ‘Gross receipts’ means the total amount realized by a business**  
24 **enterprise, without deduction for the cost of goods sold or other ex-**  
25 **penses incurred, that contributes to the production of gross income**  
26 **of the business enterprise, including the fair market value of any**  
27 **property and any services received, the sale of business assets or cap-**  
28 **ital assets and receipts from rents and royalties.**

29 **“SECTION 8. (1) Except as otherwise provided in sections 7 to 18**  
30 **of this 2019 Act, there is imposed a business activity tax on every**

1 **business enterprise with substantial nexus in this state as determined**  
2 **under section 9 of this 2019 Act. The business activity tax is imposed**  
3 **on a taxpayer’s business activity tax base, after allocation or appor-**  
4 **tionment to this state, as provided in ORS 314.280 and 314.605 to 314.675,**  
5 **at a rate of \_\_\_\_\_ percent.**

6 **“(2) The tax imposed under this section is upon the privilege of**  
7 **doing business and not upon income or property.**

8 **“(3) The tax imposed under this section:**

9 **“(a) Is not imposed on any business enterprise with gross receipts**  
10 **that are less than \$150,000.**

11 **“(b) Notwithstanding subsection (1) of this section, is imposed upon**  
12 **a business enterprise with gross receipts of at least \$150,000, but not**  
13 **in excess of \$500,000, in the amount of \$150.**

14 **“(4) For purposes of determining the business activity tax base of**  
15 **a corporation that is part of a federal affiliated group that is required**  
16 **to file on a unitary consolidated basis in Oregon, the provisions of ORS**  
17 **317.705 to 317.715 apply. The modified business activity tax base of a**  
18 **unitary consolidated taxpayer pursuant to ORS 317.705 to 317.715 is the**  
19 **sum of the modified business activity tax base of each person, other**  
20 **than a foreign operating entity, included in the unitary consolidated**  
21 **group return, less any modified business activity tax base arising from**  
22 **transactions among persons included in the unitary business group.**  
23 **Where the modified business activity tax base of any member of an**  
24 **Oregon unitary consolidated taxpayer reflects a modification for**  
25 **intercompany transactions, a unitary consolidated taxpayer may not**  
26 **take any additional modifications for such intercompany transactions.**

27 **“(5) The following are deducted from gross receipts in deriving the**  
28 **business activity tax base upon which the tax under this section is**  
29 **imposed:**

30 **“(a) All purchases of the business enterprise from other entities,**

1 including capital investments.

2 “(b) A capital asset of a type that is, or under the Internal Revenue  
3 Code will become, eligible for depreciation, amortization or accelerated  
4 cost recovery by the principal for federal income tax purposes, or for  
5 real property owned or leased by the principal.

6 “(c) Proceeds from sales by a principal that the business enterprise  
7 collects in an agency capacity solely on behalf of the principal and  
8 delivers to the principal.

9 “(d) Amounts received by the business enterprise as an agent solely  
10 on behalf of the principal that are expended by the business enterprise  
11 for any of the following:

12 “(A) The performance of a service by a third party for the benefit  
13 of the principal that is required by law to be performed by a licensed  
14 person.

15 “(B) The performance of a service by a third party for the benefit  
16 of the principal that the business enterprise has not undertaken a  
17 contractual duty to perform.

18 “(C) Principal and interest under a mortgage loan or land contract,  
19 lease or rental payments, or taxes, utilities or insurance premiums  
20 relating to real or personal property owned or leased by the principal.

21 “(D) A capital asset of a type that is, or under the Internal Revenue  
22 Code will become, eligible for depreciation, amortization, or acceler-  
23 ated cost recovery by the principal for federal income tax purposes,  
24 or for real property owned or leased by the principal.

25 “(E) Property not described under subparagraph (D) of this para-  
26 graph that is purchased by the business enterprise on behalf of the  
27 principal and that the business enterprise does not take title to or use  
28 in the course of performing its contractual business activities.

29 “(F) Fees, taxes, assessments, levies, fines, penalties or other pay-  
30 ments established by law that are paid to a governmental entity and



1 that are the legal obligation of the principal.

2 “(G) Amounts that are excluded from gross income of a foreign  
3 corporation engaged in the international operation of aircraft under  
4 section 883(a) of the Internal Revenue Code.

5 “(e) Amounts received by an advertising agency used to acquire  
6 advertising media time, space, production or talent on behalf of an-  
7 other person.

8 “(f) Amounts received by a newspaper to acquire advertising space  
9 not owned by that newspaper in another newspaper on behalf of an-  
10 other person, other than any consideration received by the business  
11 enterprise for acquiring that advertising space.

12 “(g) Proceeds from the business enterprise’s transfer of an account  
13 receivable if the sale that generated the account receivable was in-  
14 cluded in business activity income for federal income tax purposes.  
15 This paragraph does not apply to a business enterprise that during the  
16 tax year both buys and sells any accounts receivable.

17 “(h) Proceeds from any of the following:

18 “(A) The original issue of stock or equity instruments or equity is-  
19 sued by a regulated investment company as defined in section 851 of  
20 the Internal Revenue Code.

21 “(B) The original issue of debt instruments.

22 “(C) Refunds from returned merchandise.

23 “(i) Cash and in-kind discounts.

24 “(j) Trade discounts.

25 “(k) Federal, state or local tax refunds.

26 “(L) Security deposits.

27 “(m) Payment of the principal portion of loans.

28 “(n) Value of property received in a like-kind exchange under sec-  
29 tion 1031 of the Internal Revenue Code.

30 “(o) Notwithstanding paragraphs (a) to (n) of this subsection,

1 amounts received by a business enterprise that manages real property  
2 owned by a third party that are deposited into a separate account kept  
3 in the name of that third party and that are not reimbursements to  
4 the business enterprise and are not indirect payments for management  
5 services that the business enterprise provides to that third party.

6 “(6) If a business enterprise’s business activity tax base results in  
7 a negative business activity tax base, that negative business activity  
8 tax base shall be apportioned in the same manner as a positive busi-  
9 ness activity tax base so as to reflect fairly and accurately the nega-  
10 tive business activity tax base of the business enterprise within this  
11 state. The negative business activity tax base applicable to Oregon  
12 pursuant to this section shall then become a deduction in subsequent  
13 years, which may be deducted from the apportioned business activity  
14 tax base in the same manner as set forth in ORS chapter 316, and in  
15 ORS chapters 317 and 318. The limitations as to the amount deductible  
16 and the time limitations in those statutes shall apply to the appor-  
17 tioned negative business activity tax base deduction computed pursu-  
18 ant to this section.

19 “SECTION 9. (1) A business enterprise has substantial nexus in this  
20 state and is subject to the business activity tax imposed under section  
21 8 of this 2019 Act if the business enterprise has bright-line presence in  
22 this state or otherwise has nexus with this state to an extent that the  
23 business enterprise can be required to remit the tax imposed under  
24 section 8 of this 2019 Act under the Constitution of the United States.

25 “(2) A business enterprise has bright-line presence in this state for  
26 a reporting period and for the remaining portion of the calendar year  
27 if any of the following applies:

28 “(a) The person has at any time during the calendar year owned or  
29 leased property in this state with an aggregate value of at least \$50,000;

30 “(b) The person has during the calendar year payroll in this state

1 of at least \$50,000;

2 “(c) The person has during the calendar year Oregon gross receipts  
3 as determined pursuant to ORS 314.665 and applicable regulations of  
4 at least \$500,000;

5 “(d) The person has at any time during the calendar year within  
6 this state at least 25 percent of the person’s total property, total pay-  
7 roll, or total gross receipts; or

8 “(e) The person is domiciled in this state as an individual or for  
9 corporate, commercial or other business purposes.

10 “(3) For purposes of subsection (2)(a) of this section, owned property  
11 is valued at original cost and leased property is valued at eight times  
12 the net annual lease.

13 **“SECTION 10.** A credit against the taxes otherwise due under  
14 sections 7 to 18 of this 2019 Act is allowed to owners or partners of a  
15 pass-through entity, not to exceed the lesser of the amount of tax  
16 imposed under section 8 of this 2019 Act at the pass-through entity  
17 level, or \$\_\_\_\_\_.

18 **“SECTION 11.** Except as otherwise provided in sections 7 to 18 of  
19 this 2019 Act or where the context requires otherwise, the provisions  
20 of ORS chapters 305 and 314 as to the audit and examination of re-  
21 turns, periods of limitation, determinations of and notices of defi-  
22 ciencies, assessments, collections, liens, delinquencies, claims for  
23 refund and refunds, conferences, appeals to the Oregon Tax Court,  
24 stays of collection pending appeal, confidentiality of returns and the  
25 penalties relative thereto, and the procedures relating thereto, apply  
26 to the determinations of the assessment, penalties and interest under  
27 sections 7 to 18 of this 2019 Act.

28 **“SECTION 12.** (1) For purposes of the business activity tax imposed  
29 under section 8 of this 2019 Act, every business enterprise with sub-  
30 stantial nexus in this state and gross receipts of \$150,000 or more shall

1 file a return to report the business activity tax due.

2 “(2) The business activity tax imposed under section 8 of this 2019  
3 Act is due and payable to the Department of Revenue as follows:

4 “(a) If the tax due is imposed as provided in section 8 (3) of this 2019  
5 Act, the tax is due and payable to the department not later than  
6 January 31 next following the close of the calendar year.

7 “(b) Except as provided in paragraph (a) of this subsection, the  
8 taxpayer shall file a return and the tax is due and payable to the de-  
9 partment on or before the last day of January, April, July and October  
10 of each year for the previous calendar quarter. The return must be  
11 filed with the department in a form prescribed by the department.

12 “(3) The department may by rule extend the time for making any  
13 return for good cause. If the time for filing a return is extended at the  
14 request of a taxpayer, interest on any unpaid tax at the rate estab-  
15 lished under ORS 305.220 from the time the return was originally re-  
16 quired to be filed to the time of payment shall be added and paid.

17 **“SECTION 13.** (1) Subject to rules adopted by the Department of  
18 Revenue, the business activity tax imposed under section 8 of this 2019  
19 Act becomes payable in accordance with the method of accounting  
20 regularly employed by the taxpayer.

21 “(2) In the case of a lease, contract, sale or arrangement described  
22 in section 4216(c) of the Internal Revenue Code, rules similar to the  
23 rules of section 4217(e)(2) of the Internal Revenue Code shall apply for  
24 purposes of the business activity tax.

25 “(3) A business enterprise is entitled to a credit or refund for taxes  
26 previously paid on debts that are deductible as worthless for federal  
27 income tax purposes.

28 **“SECTION 14.** The Department of Revenue is authorized to and  
29 shall adopt rules requiring uniformity in application, reporting and  
30 collection and otherwise carrying out the purposes of sections 7 to 18

1 of this 2019 Act.

2 **“SECTION 15. (1) For purposes of sections 7 to 18 of this 2019 Act,**  
3 **‘successor’ means any person to whom another person quitting, selling**  
4 **out, exchanging or disposing of a business sells or otherwise conveys,**  
5 **directly or indirectly, in bulk and not in the ordinary course of busi-**  
6 **ness, a major part of the materials, supplies, merchandise, inventory,**  
7 **fixtures or equipment of the person. Any person obligated to fulfill the**  
8 **terms of a contract shall be considered a successor to any contractor**  
9 **defaulting in the performance of any contract as to which the person**  
10 **is a surety or guarantor.**

11 **“(2) If any person quits business or sells out, exchanges or other-**  
12 **wise disposes of a business or stock of goods, any business activity tax**  
13 **imposed under section 8 of this 2019 Act shall become immediately due**  
14 **and payable. The person shall, within 10 days after the sale, exchange**  
15 **or disposition, make a return and pay the tax due.**

16 **“(3) Notwithstanding ORS 314.835, the successor is liable for the full**  
17 **amount of the tax and may withhold from the purchase price a sum**  
18 **sufficient to pay any tax due until a receipt or evidence from the De-**  
19 **partment of Revenue showing payment in full of any tax due is pre-**  
20 **sented to the successor. If a receipt or other evidence is not presented**  
21 **to the successor within 10 days, the successor may pay the tax and the**  
22 **amount paid shall, to the extent paid, be considered a payment of the**  
23 **purchase price. If the tax paid by the successor is greater than the**  
24 **purchase price, the amount of the difference is a debt due to the suc-**  
25 **cessor from the seller or transferor.**

26 **“(4) A successor is not liable for any tax due from the person from**  
27 **whom the successor has acquired a business or stock of goods if the**  
28 **successor gives written notice to the department of the acquisition and**  
29 **the department does not assess a deficiency against the seller or**  
30 **transferor within one year of receipt of the notice of acquisition and**

1 mail or deliver a copy of the assessment to the successor.

2 **“SECTION 16. (1) Except as otherwise provided by law, all moneys**  
3 **received by the Department of Revenue under sections 7 to 18 of this**  
4 **2019 Act shall be deposited in the State Treasury and credited to a**  
5 **suspense account established under ORS 293.445. Refunds, including**  
6 **refunds of erroneous overpayments or refunds of other moneys re-**  
7 **ceived in which the department has no legal interest, shall be paid out**  
8 **of the suspense account.**

9 **“(2) After payment of refunds and administrative costs under**  
10 **sections 7 to 18 of this 2019 Act, the net revenue shall be transferred**  
11 **to the State School Fund established in ORS 327.008. A working bal-**  
12 **ance of unreceipted revenue from the business activity tax imposed**  
13 **under section 8 of this 2019 Act may be retained by the department for**  
14 **the payment of refunds, but such working balance may not at the**  
15 **close of any fiscal year exceed the amount of \$500,000.**

16 **“(3) There are continuously appropriated to the department**  
17 **amounts necessary to pay the administrative expenses of the depart-**  
18 **ment in administering, collecting and enforcing the business activity**  
19 **tax imposed under section 8 of this 2019 Act.**

20 **“SECTION 17. (1) Any person that is required under sections 7 to**  
21 **18 of this 2019 Act to make, render, furnish, sign or verify any business**  
22 **activity tax return and that makes any false or fraudulent return or**  
23 **supplementary return with intent to defeat or evade the determination**  
24 **of an amount of tax due is subject to penalty as provided under ORS**  
25 **314.991 (1).**

26 **“(2) Failure or refusal to file any business activity tax return or**  
27 **supplementary return, or to furnish any information required by the**  
28 **Department of Revenue, is a Class A misdemeanor.**

29 **“(3) Violation of any provision contained in sections 7 to 18 of this**  
30 **2019 Act, or any rule adopted thereunder, is a Class A misdemeanor.**

